**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO.7858 OF 2006.**

Govind Sakharam Attar
(since deceased through LRs.)
Smt.Meena Suresh Attar & others. ... Petitioners.
Versus.
Smt.Manda @ Mandakini Ramchandra
Attar and others. ... Respondents.

Shri Dilip Bodake for the Petitioners.

Shri T.D.Deshmukh for the Respondent No.1.

**CORAM : ABHAY S.OKA, J.**

**DATED : 14th February, 2007.**

**P.C.:**

1. By consent of the learned Advocates appearing for the parties, taken up for final disposal at admission stage. Heard the learned Advocates appearing for the parties.

2. The Petitioners are Defendants in S.C.Suit No.741 of 2001 filed by the Respondents. The said suit was filed in the Court of the Civil Judge, Senior Division, Pune and was transferred to the Court of the learned 9th Adhoc Additional District Judge, Pune. The valuation of the suit made for jurisdiction is Rs.1,12,500/-. The Petitioners preferred an appeal under section 96 of the Code of Civil Procedure, 1908 against the impugned Judgment and Decree passed in the

said suit in the Court of the learned District Judge, Pune. The learned District Judge passed an order directing that the Appeal cannot be registered as the same will not lie before the District Court.

3. My attention has been invited under section 16 of the Bombay Civil Courts Act 1869, which reads thus:

> "16. Original jurisdiction of (Additional District Judge.)
>
> . The District Judge may refer to any Additional District Judge subordinate to him any original suits and proceedings of a civil nature, application or reference under special Acts and miscellaneous applications.
>
> . The Additional District Judge shall have jurisdiction to try such suits and to dispose of such applications or references.
>
> . Where the Additional District Judge's decrees and orders in such cases are appealable, the appeal shall lie to the District Court or to the High Court according as the amount or value of the subject-matter does not exceed or exceeds two lakh rupees."

The suit filed by the Respondents was referred to the learned 9th Adhoc Additional District Judge under the orders of the learned District Judge. The valuation of the subject matter of the suit does not exceed Rs.2 lakhs. Therefore, the forum of appeal provided under section 16 is the Court of the District Judge. Only if the amount of valuation of the subject matter of the suit would have exceeded Rs.2 lakhs, this Court could have been the forum of appeal. Thus the order impugned passed by the learned District Judge is contrary to the express provisions of law and the same is required to be set aside.

4. Accordingly the order dated 2nd August 2006 is quashed and set aside and it is held that the Appeal preferred by the Petitioner is maintainable in the District Court. The District Court will decide the Appeal in accordance with the law.

**Judge.**